

MARION COUNTY PROBATE RULES

Rule 1. Scope and title.

These Rules shall apply in the Marion Circuit and Superior Courts and shall be applicable in all probate matters. These Rules are in addition to and are not intended to replace the Marion County Local Rules of Court. In the event of a conflict in a probate matter, the Marion County Probate Rules shall apply.

1.2. Title. These Rules shall be known as the "Marion County Probate Rules".

Rule 2. Adoptions.

2.1. Except for good cause shown, no final hearings in adoption proceedings shall take place until the adopting couple (or the birth parent and adopting stepparent) have been married for at least one (1) year

2.2. A consent to adoption must be notarized.

Rule 3. Attendance of proposed fiduciaries.

3.1. All proposed personal representatives and guardians who are residents of Indiana shall appear before the Court to qualify

3.2. Non-residents shall either appear or submit an affidavit describing their education, employment and lack of felony convictions

Rule 4. Representation of fiduciaries by counsel.

No personal representative or guardian of an estate may proceed without counsel.

Rule 5. Bonds in estates.

5.1. In every unsupervised and supervised estate the personal representative shall file a corporate surety bond in an amount determined by the Court to be adequate to protect distributees, creditors and taxing authorities except as hereinafter provided

5.2. No surety bond is required where a corporate fiduciary serves as personal representative or co-personal representative.

5.3. No surety bond is required in a solvent-estate where the decedent's spouse serves as personal representative and is the sole distributee.

5.4. Where a will provides that bond be dispensed with, the Court shall nonetheless fix a bond in an amount adequate to protect creditors and taxing authorities.

5.5. Where the personal representative is a distributee, the bond may be reduced by the personal representative's estimated net distributive share, but the Court will fix a bond adequate to protect other distributees (if any), creditors and taxing authorities.

5.6. Where all distributees consent in writing that the personal representative serve without bond, the Court will fix a bond in an amount adequate to protect creditors and taxing authorities.

Rule 6. Inventory in estates.

6.1. In all supervised estates, the personal representative shall file an inventory conforming with the requirements of I.C. 29-1-12-1 within two (2) months of appointment

6.2. In all unsupervised estates, the personal representative shall, within two (2) months of appointment either:

A. file an inventory conforming with the requirements of I.C. 29-1-7.5-3.2(b) or

B. file a verified certification that an inventory conforming with the requirements of I.C. 29-1-7.5-3.2 has been prepared and is available to be furnished to distributees on request.

Rule 7. Wrongful death estates.

7.1. All proposed wrongful death settlements must be approved by the Court, whether the estate is supervised, unsupervised, or a special administration for the sole purpose of prosecuting the wrongful death claim

7.2. When an estate remains open one (1) year, the personal representative shall file a status report as to any wrongful death claims. If an action is pending, the report shall show the cause number and the court.

7.3. When a judgment has been paid or a petition for approval of settlement is filed in any estate, a petition shall be filed showing proposed distribution, in accordance with I.C. 34-1-1-2 [repealed]. Such petition must set out the proposed distribution to the appropriate statutory damage distributees, such as:

1. Expenses of administration;
2. Providers of funeral and burial expenses;
3. Providers of medical expenses in connection with last illness of decedent;
4. Surviving spouse;
5. Dependent children;
6. Dependent next of kin (if there is no surviving spouse or dependent children).

A proposed order shall be presented to the Court, ordering distribution in accordance with I.C. 34-23-1-1 and requiring that a final account as to the wrongful death proceeds be filed within thirty (30) days.

7.4. I.C. 34-23-2-1 does not provide for the opening of a minor's wrongful death estate.

Rule 8. Orders and deeds in unsupervised estates.

- 8.1. No deeds shall be approved in unsupervised estates
- 8.2. No orders approving closing statements will be signed.

Rule 9. Time for closing estates.

9.1. Personal representatives shall comply with I.C. 29-1-16-2, which provides as follows: "Every personal representative shall close the estate as promptly as possible. Unless for good cause shown, the time for filing the final account in the estate shall not exceed one (1) year from the appointment of a personal representative.

9.2. Good cause for not closing a supervised estate within one (1) year may be shown by filing an intermediate account within thirty (30) days after the expiration of one (1) year. Such accounting shall comply with the provisions of I.C. 29-1-16-4 and I.C. 29-1-16-6.

9.3. The intermediate account shall also state facts showing why the estate cannot be closed.

9.4. Failure to close within one (1) year or show cause why estate cannot be closed may be grounds for removal of the personal representative, pursuant to I.C. 29-1-10-6, and for reduction or forfeiture of personal representative fees and attorney fees.

9.5. A closing statement shall be filed within one (1) year after opening an unsupervised estate; provided however a status report may be filed in lieu of a closing statement. The status report must indicate why the estate cannot be closed and project a closing date.

Rule 10. Guardianships.

10.1. In all guardianship or protective proceedings seeking to declare an adult incapacitated, either the person alleged to be incapacitated shall be present at the hearing or the petitioner shall present sufficient medical evidence to establish that a court appearance would result in injury to the person's health or safety

10.2. In all guardianship or protective proceedings seeking to declare an adult incapacitated, the Court's prescribed physician's report form must be completed and presented to the Court at or before the hearing.

10.3. Pursuant to I.C. 29-3-3-4(a) no guardian of an adult shall be appointed or protective order entered without notice except upon verified allegations that delay may result in immediate and irreparable injury to the person or loss or damage to property.

10.4. No guardian shall be appointed over a minor for the sole purpose of establishing residence in a school district.

Rule 11. Restricted accounts and bonds in guardianships.

11.1. In guardianships over the estate of a minor, unless otherwise authorized by the Court, funds shall be placed in a restricted account designating that no principal or interest may be withdrawn without written order of the Marion Superior Court, Probate Division

11.2. Prior to the issuance of letters in a guardianship over a minor's estate or the compromise of a minor's claim, the guardian and attorney shall execute the Court's attorney's undertaking form making the attorney personally responsible for the deposit of the funds in a restricted account.

11.3. Within a time prescribed by the Court a certification by a financial institution that a properly restricted account has been created shall be filed.

11.4. No surety bond or restricted account is required where a corporate fiduciary serves as guardian or co-guardian of the estate.

Rule 12. Fees.

12.1. No fees for personal representative, guardians or attorneys shall be paid from any guardianship or supervised estate without prior written order of the Court

12.2. Fees in unsupervised estates shall not be subject to Court approval.

12.3. A petition for fees must be signed or approved in writing by the personal representative or guardian.

12.4. Partial fees in a supervised estate may be requested when:

A. An intermediate accounting has been approved, or

B. The Court finds upon petition that a tax advantage will result from payment of partial fees.

12.5. In all other cases payment of fees in supervised estates shall be authorized as follows:

A. One-half upon the filing of an inheritance tax return or upon a Court determination of no tax due; and

B. The remaining one-half upon approval of the final account.

12.6. In a guardianship an initial petition for fees may be filed upon filing the inventory. Except as provided in paragraph 12.7, no further petition for fees will be approved until an annual, biennial or final account is approved.

12.7. When unusual circumstances require substantial work in a guardianship, the Court may award fees prior to the approval of an account.

12.8. Attorney fees for representing a minor in settlement of a claim for personal injuries are subject to Court approval. If the entire attorney fee is to be paid at the time a structured settlement is approved, the amount of the fee must be based on the present value of the settlement.

Rule 13. Voucher requirements for accounts.

I.C. 29-1-16-4 requires that personal representatives of supervised estates and guardians file vouchers (proof of payment) for all disbursements when an account is filed. Affidavits in lieu of vouchers will not be accepted unless submitted by corporate fiduciaries.

Rule 14. Notice.

14.1. Whenever notices of any hearing or trial is given, it is the responsibility of the moving party to submit proof of service

14.2. Copies of the subject motion or petition must be served with all notices of hearing.

14.3. Whenever any estate or guardianship account (including a final account in a supervised estate) is set for hearing, copies of the account must be served with notice of hearing.

Rule 15. Requirement of verification.

All motions, petitions, inventories and accounts in estates or guardianships shall be notarized or verified.

Rule 16. Change of address.

A personal representative or guardian who changes address shall immediately advise the Court of the new address.